

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VINCENT HARRIS YAZZIE,

Petitioner,

v.

No. 14-73100

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Respondent,

RESPONSE TO MOTION FOR INTERVENTION BY THE NAVAJO NATION

Petitioner is against November 4, 2014 Motion for Intervention by the Navajo Nation as the Navajo Nation is precluded from regulating Navajo Generation Station (NGS). In Salt River Project Agricultural Improvement and Power District (SRP) v. Reynold R. Lee, Casey Watchman, Woody Lee, Peterson Yazzie, Evelyn Meadows, Honorable Herb Yazzie[Navajo Nation Supreme Court Chief Justice], Honorable Lorene B. Ferguson [Navajo Nation Supreme Court Justice], Honorable Cathy Begay [Navajo Nation Supreme Court Justice], Leonard Thinn and Sarah Gonnies, (Lee, et.al) CV-08-8028-PCT, United States District Court for the District of Arizona (USDCAZ) or collectively as SRP v. Lee, et.al. CV-08-8028-PCT, USDAZ, MOTION for Preliminary Injunction by Salt River Project Agricultural Improvement and Power District, Headwaters Resources, Inc.. (Attachments: # 1 Appendix Declarations, # 2 Exhibit Index, EX 1 part 1, # 3 Exhibit 1 part 2, # 4 Exhibit EX 2 part 1, # 5 Exhibit EX 2 part 2, # 6 Exhibit EX

3, # 7 Exhibit EX 4 to EX 8, # 8 Exhibit EX 9 to EX 11, # 9 Exhibit EX 12 to EX 17)(Egbert, John) (Entered: 03/03/2008), Document 5, page 5, lines 4 to 12.

Operation of Navajo Generation Station. The Tribe covenants that, other than expressly set out in this Lease, **it will not directly or indirectly regulate or attempt to regulate the Lessees in the construction, maintenance or operation of the Navajo Generation Station** and the transmission systems of the Lessees or the construction, maintenance or operation of the fuel transportation system of the Lessees, or the Fuel Transporter. This covenant shall not be deemed a waiver of whatever rights the Tribe may have to regulate retail distribution of electricity on the Reservation Lands. Nothing herein shall convey to the Lessees, or any of them, any rights to engage in retail distribution of electricity on Reservation Lands.

Permanent Injunction was finally approved adverse to the Navajo Nation on January 28, 2013 by Judge James A. Teilborg, Document 187. CLERK'S JUDGMENT- Pursuant to the Court's order filed this date and upon the Court's instruction therein, declaratory judgment is entered for Plaintiffs Salt River Project Agricultural Improvement and Power District, a municipal corporation and political subdivision of the State of Arizona, and Headwaters Resources, Inc., a Utah corporation, against Defendants Reynold R. Lee, Casey Watchman, Woody Lee, Peterson Yazzie, Evelyn Meadows, Honorable Herb Yazzie, Honorable Louise G. Grant, Honorable Eleanor Shirley, Leonard Thinn and Sarah Gonnies (LFIG) (Entered: 01/28/2013) as Document 188. Judgement is for employment purposes, but is derived from the Navajo Nation lease agreement and 323 Grant Right-of-Way to SRP which also prevents Navajo Nation from regulating NGS.

1 Navajo Nation is at Federal Register 79-46514, 79-46515, and 79-46516,
2 Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze
3 Requirements for Navajo Generating Station which is this Petition of Review.
4

5 <http://www.gpo.gov/fdsys/pkg/FR-2014-08-08/html/2014-18228.htm>

6 Recent NGS lease agreement was not released to the Navajo Nation Council
7 until the last minute. I do not have a copy of the recent Navajo Nation Lease
8 Agreement with NGS. TWG was never released to the Navajo Nation public
9 until a week after the NGS lease agreement was signed. Navajo Nation must
10 not hide behind Attorney Client privilege and Navajo Nation Privacy Act on
11 NGS lease Agreement and TWG agreement.
12

13
14 SRP Motion to Intervene filed on October 31, 2014, [docket entry 6](#), page 5
15 cites "Tribal Authority Rule" ("TAR")

16 Section 49.11 of the TAR authorizes EPA to promulgate a FIP when
17 EPA determines such regulations are "necessary or appropriate" to protect
18 air quality. 40 CFR 49.11(a) . . . The Court of Appeals for the Tenth Circuit
19 considered the regulatory language in 40 CFR 49.11(a) and concluded that
20 "[i]t provides the EPA discretion to determine what rulemaking is necessary
or appropriate to protect air quality and requires the EPA to promulgate such
rulemaking."

21 The Navajo Nation has given up its ability to regulate NGS including air
22 emission and was illegal to be part of the Technical Work Group (TWG). Navajo
23 Nation not eligible for TAR according to 40 CFR §49.6 Tribal eligibility
24 requirements which is part of the Navajo Nation lease agreement with SRP.
25
26
27
28

1 <http://www.ecfr.gov/cgi-bin/text->

2 [idx?SID=29267f575cacadf2c0b10b0d6f171eae&node=sp40.1.49.a&rgn=div6#se40](http://www.ecfr.gov/cgi-bin/text-idx?SID=29267f575cacadf2c0b10b0d6f171eae&node=sp40.1.49.a&rgn=div6#se40)

3 [.1.49.11](#)

4 .1.49.11
5 40 CFR §49.6 Tribal eligibility requirements.

6 Sections 301(d)(2) and 302(r), 42 U.S.C. 7601(d)(2) and 7602(r), authorize the
7 Administrator to treat an Indian tribe in the same manner as a State for the
8 Clean Air Act provisions identified in §49.3 if the Indian tribe meets the
9 following criteria:

10 (a) The applicant is an Indian tribe recognized by the Secretary of the
11 Interior;

12 (b) The Indian tribe has a governing body carrying out substantial
13 governmental duties and functions;

14 (c) The functions to be exercised by the Indian tribe pertain to the
15 management and protection of air resources within the exterior boundaries
16 of the reservation or other areas within the tribe's jurisdiction; and

17 (d) The Indian tribe is reasonably expected to be capable, in the EPA
18 Regional Administrator's judgment, of carrying out the functions to be
19 exercised in a manner consistent with the terms and purposes of the Clean
20 Air Act and all applicable regulations.

21 Navajo Nation's Motion to Intervene should be denied as they have given up
22 jurisdiction to regulate NGS.

23 Exhibit A is my Interagency Pass #141 040069 to Grand Canyon National
24 Park (GCNP), Bryce Canyon National Park (BCNP), Mesa Verde National Park
25 (MVNP), Petrified Forest National Park (PFNP) a class one area for recreational
26 purposes. Haze from NGS ruins my enjoyment of GCNP and BCNP. On
27 occasion I visit GCNP and BCNP. I have hiked Bright Angel Trail, South
28 Kaibab Trail, Grand View Trail, Hermit Trail and Tanner Trail. I have visited

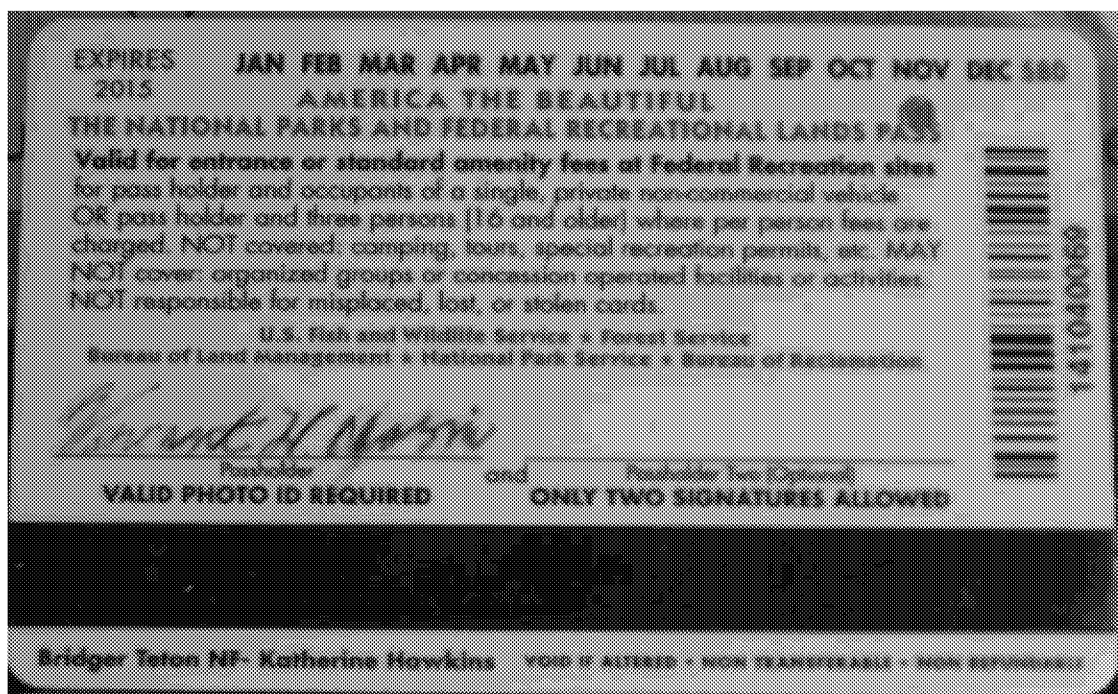
1 all view points on the South Rim of GCNP and the North Rim Lodge on the
2 North side of GCNP. I have watched the sunrise at Desert View during the
3 summer time. I have seen the sunset at Hopi Point, Powell Point, Yavapai
4 Point, Mather Point, Yaki Point, Mohave Point and Desert View At BCNP, I
5 have been Yovimpa Point, Rainbow Point, Farview Point, Sunrise Point, Sunset
6 Point, Inspiration Point, Bryce Point and Paria Point. The haze from NGS ruins
7 the view.
8
9

10 This Response is timely. Ten days for Response and three days for service.
11 Navajo Nation filed Motion to Intervene on November 4, 2017. A Response is
12 due on November 17, 2014.
13

14 Respectfully submitted this 17th day of November, 2014.

15 /s/ Vincent H. Yazzie

16 Vincent H. Yazzie, Pro Se
17 10080 Palomino Road
18 Flagstaff, Arizona 86004
19 Phone: (928) 380-3198
20 Phone/fax: (928) 266-1711
21 vinceyazzie@yahoo.com
22
23
24
25
26
27
28

Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2014, one copy of the foregoing
RESPONSE TO MOTION FOR INTERVENTION BY THE NAVAJO NATION was
 served on each of the following individual by electronic service FRAP 25(c)(1)(D) and
 prepaid First Class Mail according to FRAP 25(c)(1)(B):

Dan Dertke
 U.S. Department of Justice
 P.O. Box 7611
 Washington, DC 20044
 (202) 514-0994
daniel.dertke@usdoj.gov

Salt River Project Agricultural
 Improvement and Power District
 Norman William Fichthorn
 Hunton & Williams LLP
 2200 Pennsylvania Avenue, NW
 Washington, DC 20037
 Email: nfichthorn@hunton.com

Gila River Indian Community
 Merrill C. Godfrey
 Akin Gump Strauss Hauer & Feld LLP
 1333 New Hampshire Avenue, N.W.
 Washington, DC 20036
 Email: mgodfrey@akingump.com

Central Arizona Water Conservation
 District
 Ryan A. Smith
 Brownstein Hyatt Farber Schreck, LLP
 510
 1350 I Street, NW
 Washington, DC 20005
 Email: rsmith@bhfs.com

D. Harrison Tsosie, Attorney General
 Paul Spruhan
 Navajo Nation Department of Justice
 P.O. Box 2010
 Window Rock, Arizona 86515
 Tel: 928-871-6937
 Fax: 928-871-6177
pspruhan@nnodj.org

/s/ Vincent H. Yazzie
 Vincent H. Yazzie